REMARKS

In the instant application, claims 1-9 are pending and have been made the subject of a Restriction Requirement.

I. Restriction Requirement Under 35 U.S.C. § 121

The Examiner asserts that Restriction to one of the following inventions is required under 35 U.S.C. § 121:

I. Claims 1 to 6, drawn to the compound of formula (I), classified in various subclasses of various classes such as class 544, subclass 336; class 546, subclass 314; class 548, subclass 200, for example.
II. Claim 7, drawn to the process of making the compounds of formula (I), classified in class 544, subclass 336; class 546, subclass 314; class 548, subclass 200, for example.
III. Claims 8-9, drawn to method of treating cardiovascular disease, classified in class 514, subclass 365, 374 and 252.1.

Restriction Requirement, pages 2-3.

Applicants traverse the Examiner's Restriction Requirement and request reconsideration.

Applicants first point out that the Examiner has incorrectly defined claim 7 as drawn to the process of making the compounds of formula (I). Claim 7, in fact, is directed to a pharmaceutical composition comprising a compound of formula (I). Thus, the restriction between Groups I and II is improper.

Further, Applicants submit that the Examiner has not satisfied the requirements for the Restriction Requirement among Groups I-III. 35 U.S.C. § 121 states that "[I]f two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions..." Furthermore, 37 C.F.R. § 1.141 states that "[T]wo or more independent and distinct inventions may not be claimed in one national application..." Thus, the Examiner has to prove that the inventions in the instant application are both independent and distinct to issue a Restriction Requirement. In the Office Action, the Examiner only proffers that the inventions are distinct. However, the Examiner provides no explanation whatsoever why the inventions in the instant application are independent. Therefore, the Examiner has not met her burden to prove that the Restriction Requirement is proper.

Furthermore, for a Restriction Requirement to be proper the MPEP §803 states that "there must be a serious burden on the examiner if restriction is required."

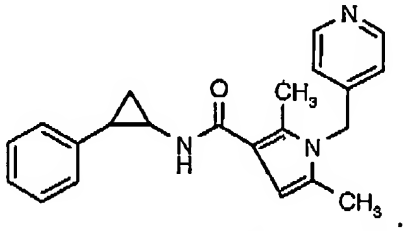
Applicants submit that the inventions of Groups I-III do not impose an undue search burden on the Examiner. Specifically, a search for the claimed compounds of Groups I is bound to reveal information concerning their use. Accordingly, performing the search covering the compounds and the method of their use would not be a serious burden on the Examiner.

Thus, Applicants submit that the Examiner has failed to provide sufficient reasons in support of a restriction between the inventions of Groups I-III. Accordingly, Applicants respectfully request reconsideration and withdrawal of the restriction requirement between the claims encompassed by these groups.

II. Provisional Election

To comply with the Examiner's Restriction Requirement, Applicants provisionally elect, with traverse, Group I, claims 1-6.

To comply with the Examiner's Election of Species Requirement, Applicants provisionally elect the species of the compound of Example 22, having the following structure:



Applicants submit that once the compounds of the present invention are found to be novel, then the other Groups defined by the Examiner where appropriate should be subject to rejoinder, pursuant to linking claim practice.

Applicants also affirm their right to file one or more divisional applications with respect to any other non-elected subject matter.

III. In Conclusion

The Commissioner is hereby authorized to charge the fee required and any additional fees that may be needed to Deposit Account No. 18-1982 in the name of Aventis Pharmaceuticals Inc.

Respectfully submitted,

Date: January 3, 2006

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Aventis Docket No. DEAV2002-0058 US NP